

立法會
Legislative Council

LC Paper No. CB(1)2402/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

**Panel on Financial Affairs and
Panel on Manpower**

**Minutes of joint meeting held on
Thursday, 19 June 2003 at 4:30 pm
in the Chamber of Legislative Council Building**

Members present : Members of the Panel on Financial Affairs

- * Hon Ambrose LAU Hon-chuen, GBS, JP (Chairman)
Hon Henry WU King-cheong, BBS, JP (Deputy Chairman)
- * Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
- * Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon MA Fung-kwok, JP

Members of the Panel on Manpower

Hon LAU Chin-shek, JP (Chairman)
Hon CHAN Kwok-keung (Deputy Chairman)
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon YEUNG Yiu-chung, BBS
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, JP

Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Hon Frederick FUNG Kin-kee

(* Also members of the Panel on Manpower)

Non-Panel members attending : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Andrew WONG Wang-fat, JP
Hon Miriam LAU Kin-ye, JP

Members absent : Members of the Panel on Financial Affairs

Dr Hon David LI Kwok-po, GBS, JP
Dr Hon Philip WONG Yu-hong
Hon Emily LAU Wai-hing, JP

Members of the Panel on Manpower

Hon Cyd HO Sau-lan
Dr Hon LUI Ming-wah, JP
Hon SZETO Wah

Public officers attending : Mr Stephen IP
Secretary for Economic Development and Labour

Mr Frederick MA
Secretary for Financial Services and the Treasury

Mr Matthew CHEUNG
Permanent Secretary for Economic Development and Labour (Labour)

Mr Benjamin TANG
Commissioner of Insurance

Miss Susie HO
Deputy Secretary for Financial Services and the Treasury (Financial Services) 2

Mrs Jenny CHAN
Assistant Commissioner for Labour (Rights and Benefits)

Clerk in attendance : Ms Connie SZETO
Chief Assistant Secretary (1)4

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Ms Rosalind MA
Senior Assistant Secretary (1)9

Ms Christina SHIU
Legislative Assistant

Action

I Election of Chairman

Mr Ambrose LAU was elected Chairman of the joint meeting.

II Follow-up on issues relating to employees' compensation insurance arising from discussion on difficulties encountered by some sectors in obtaining insurance coverage at special meetings of the Panel on Financial Affairs held in March 2003

(LC Paper Nos. CB(1) 1742/02-03(01), 1904/02-03(01), 1762/02-03 & 1671/02-03)

Briefing by the Administration

2. At the Chairman's invitation, the Secretary for Financial Services and the Treasury (SFST) set out briefly the Administration's responses to the concerns raised at the special meetings of the Panel on Financial Affairs (FA Panel) held on 15 and 22 March 2003. SFST said that he fully appreciated the concerns expressed by members and various trades on the recent increase in premium rates, especially those relating to employees' compensation (EC) and motor vehicle third party risk. He stressed that this was the result of a combination of factors, including losses suffered by EC insurers, contraction of worldwide reinsurance capacity following the "911" events in the United States and weak investment returns in recent years. He said that it would not be appropriate for the Government to intervene in the operation of the insurance market as it was an open market and the level of premiums should best be set by market forces. SFST pointed out that the Administration had been providing assistance to employers who encountered difficulty in obtaining EC insurance coverage through increasing market transparency and facilitating communication between insurers and employers seeking insurance coverage. Furthermore, the Commissioner of Insurance (CI)

had written to all EC insurers recently appealing to them to offer coverage when they were in a position to do so.

3. The Secretary for Economic Development and Labour (SEDL) highlighted the following assistance provided by the Labour Department (LD) to employers who encountered difficulties in obtaining EC insurance:

- (a) compiled a list of insurance brokers who specialized in EC insurance with the assistance of the Office of Commissioner of Insurance (OCI) and the insurance brokers associations and passed the list to employers seeking assistance;
- (b) promoted risk assessment and good occupational safety and health practices to help employers reduce or prevent occupational accidents;
- (c) launched a scheme in June 2002 to provide timely information on work-related accidents which involve back injuries and multiple injuries to participating insurers on a weekly basis; and
- (d) initiated the Voluntary Rehabilitation Programme for Work Injuries in the Construction Industry in March 2003 with a view to providing timely rehabilitation services to injured workers in the construction industry for better and speedier recovery, and to facilitate their safe and early return to work.

Discussion with members

High premium rates causing difficulties to employers

4. Mrs Selina CHOW opined that with the statutory requirement for employers to take out EC insurance coverage for their employees, the insurance market should not be left entirely free to determine the premium rates. She considered that for a mandatory scheme like the EC, the premiums should not be determined by market forces. The present mechanism was therefore ineffective under the mandatory system.

5. Ms Miriam LAU urged the Administration to provide assistance to employers of various business sectors in obtaining EC insurance coverage at reasonable premium levels instead of only working out a list of insurers for their reference. She remarked that although the insurance market was a free one, operators of various industries were bound by law to obtain statutory insurance coverage for EC insurance. She considered that the Administration should introduce measures to ensure that all employers would be able to obtain EC insurance coverage at reasonable and affordable premium levels instead of reacting only upon the complaints from frustrated employers.

6. Mr LEUNG Fu-wah expressed his disappointment with the Administration for not offering any solution to the problem. He pointed out that facing the high EC insurance premiums, it had become very difficult for employers to take out EC insurance for their employees. Some employers had chosen to ignore the statutory requirement. Mr LEUNG opined that as it was a statutory requirement for employers to obtain EC insurance coverage for their employees, the Administration had the responsibility to facilitate employers in fulfilling the requirement. Ms LI Fung-ying and Miss CHAN Yuen-han shared his view.

7. SEDL said that increasing EC insurance premium was an issue of concern for parties including employers, employees and insurers. Having regard to the significant losses suffered by the insurance industry in recent years, it was understandable that premiums would increase under the market mechanism when insurers sought to cut down losses. As EC insurance was a statutory requirement under the Employees' Compensation Ordinance (ECO), the Administration was concerned about the provision of insurance products in the market so that employers would be able to take out the necessary insurance coverage required by the law.

8. SFST added that for the healthy development of the insurance industry in the long run, insurers could not suffer from continuous loss in EC insurance as this would pose risk to employees' protection if these insurers failed to pay the claims in the end. He emphasized that the level of insurance premium should be set by market forces.

9. Mr Abraham SHEK pointed out that hardship was experienced by the construction industry as premiums for EC insurance coverage constituted a major part of the operating cost for small scale construction works. Mr LEE Cheuk-yan echoed that the construction industry was facing keen competition in the recent years with the decrease in the number of works projects. As increase in EC premiums was not a factor for seeking compensation under the works contract, contractors were not able to recover the higher premiums from the project costs which were fixed at the time of the award of tenders. As a result, more and more construction workers were forced to become "self-employed persons" so that the contractors did not need to shoulder the EC insurance premiums. In the end, it was the workers who would suffer.

10. Ms Miriam LAU also referred to the difficulties encountered by various sectors in obtaining the statutory insurance coverage, in particular, the transportation sector. She pointed out that despite that there were about 70 authorized insurers who carried on EC insurance business, only a few were willing to offer insurance coverage to the employers. Moreover, even if offers were given, the premiums were too high for employers to afford. The Chairman noted that Ms LAU had also referred to the high premiums in respect of motor vehicle insurance, and informed that to enable a focused discussion, this meeting

would only deal with issues relating to EC insurance. Arrangements would be made for issues relating to motor vehicle insurance to be dealt with at another meeting.

11. CI responded that while he fully appreciated the concern of business operators in obtaining insurance coverage, it was not within his purview to interfere with the underwriting policy and premium setting of insurers. He explained that as a regulator of the insurance industry, he had the responsibility to ensure that the insurance companies were financially sound and were doing business on a commercially viable basis. He further pointed out that as a follow-up to the special FA Panel meetings held in March, he had written to all EC insurers to encourage them to provide EC insurance coverage and since then, the Administration had not received any complaints on inability to obtain EC insurance coverage.

12. SFST explained that it was against the free market principle for the Administration to intervene or direct the business decisions of any commercial entities. While appreciating members' concern, SFST pointed out that insurance was a risk assessing and pricing business and in the open insurance market of Hong Kong, the premiums were set by market forces having regard to a number of relevant factors. SFST and CI reiterated that as the market regulator, the Administration's role was to ensure sound financial status of the companies in the market.

13. SEDL pointed out that the statutory requirement for EC insurance coverage was stipulated in ECO to ensure that employees would be able to receive compensation and to protect employers when they were liable for the payment of compensation or damages. Whilst the increase in EC insurance premium was a fact, employers might explore means to absorb the higher cost for EC insurance, such as by taking into account such cost when setting the tender price in bidding for works contract.

14. As regards the protection to "self-employed" construction workers, SEDL advised that the decision on whether an injured worker was an employee or a self-employed person would be determined with reference to the substantive facts of the case. LD had reached an understanding with the insurance industry that insurers would take account of all circumstances of the case, rather than just the status of a worker under the Mandatory Provident Fund (MPF) Scheme.

15. Mr LEE Cheuk-yan remarked that from his experience in assisting EC claimants, the "self-employed" status of an injured worker would create complications and difficulties in establishing the eligibility for compensation under ECO and often involved considerable time and money for legal proceedings.

16. Mr Albert HO enquired whether the increase in premium rates had resulted from the Administration's lack of efforts in strengthening occupational

safety. SEDL advised that as a matter of fact, the accident rate per thousand employees in all industries had decreased from 52 in 2000 to 37 in 2002. In response to Mr HO's request, SEDL undertook to provide information on the comparison of workplace safety in Hong Kong and other countries, such as Japan, by providing information on deaths and work injuries in the past few years.

17. Mrs Selina CHOW pointed out that with the decline in the number of deaths and injuries at work place, there should be room for a reduction in EC insurance premiums. In this connection, Mr Tommy CHEUNG also pointed out that the catering industry was suffering from significant increase in insurance premium in the past few years despite its continuous improvement in work safety. Mr CHEUNG considered the premium setting policies of the insurance industry unfair to the low risk industries, such as the catering industry, as they had to share the cost of insurance coverage for high risk industries and pay unreasonably high premiums. He also doubted whether the insurance industry was setting the premium on the high side to secure profits.

18. SEDL pointed out that while the catering industry was relatively low risk in that the work related injuries were generally of less serious nature with fewer number of fatal accidents, the accident rate per thousand employees for the catering industry was 55 in 2002, which was higher than the average rate of 37 for all industries.

19. Mr Tommy CHEUNG requested the Administration to provide information on the number of EC claim cases, amount of compensation awarded and the level of insurance premium in the past few years, with breakdown by business sectors, in particular, the catering industry. In response, CI informed members that OCI had started work in collecting the underwriting statistics of EC insurers to be broken down into ten occupational types, including the catering industry, commencing with the statistics relating to the financial year ended 31 December 2002. The statistics would be published and could be provided to members in due course.

(Post-meeting note: The information provided by the Administration in response to members' requests at paragraphs 16 and 19 above were circulated to members vide LC Paper No. CB(1)2376/02-03(01) on 29 August 2003.)

Higher compensation awarded by the courts

20. In response to Mrs Selina CHOW's comment on the high premium rates, CI remarked that this might have been the result of the escalating trend of common law damages awarded by the court in the past years. Taking the example of common law damages for claimants in the construction industry, the maximum amount of damage awarded in 1996 was \$7 million but this increased to \$14 million in 1999.

21. Mr NG Leung-sing was concerned about the escalating trend of common law damages awarded by the court and asked the Administration to explore whether guidelines could be worked out to ensure reasonable levels of compensation awarded by the court, with due respect to the decision of the court and independence of the judiciary.

22. CI explained that under the current system, an injured employee could claim both statutory compensation under ECO and damages under the common law if he could prove negligence or fault on the part of the employer. While there was an upper limit of \$1.7 million for the compensation in respect of death under ECO, the amount of damages to be awarded to the injured employee under the common law claim was not subject to an upper limit. The court would examine, among other things, evidence of loss of earnings drafted by lawyers in assessing damages and determine the final award based on the merits and circumstances of individual cases. In reply to Mr NG's enquiry on the legal cost involved in EC claims, CI said that OCI did not have figures in this regard but according to the estimation made by the insurance industry, the legal cost amounted to about 40% of the claims payout.

23. SEDL said that there had been a suggestion that legislative amendments should be introduced to limit the right of an injured employee to claim only one form of compensation (i.e. either statutory compensation or common law damages) like in the case of Singapore, or to cap the maximum amount of compensation to be awarded. Nevertheless, he cautioned that Members representing labour interest might have concern about such a move as it would limit the right of an injured employee to claim common law damages. At present, common law right was applicable to all personal injury claims, and work injury cases, i.e. EC cases, were only part of such claims. If members considered this suggestion worth exploring, the Administration would be willing to explore the feasibility of the proposed measures.

24. At the request of Mrs Selina CHOW, CI undertook to relay to the Judicial Administrator the concerns of members and business sectors on the escalating trend of damages for compensation awarded by the court for employees' claims and for other personal injury litigation, which was believed to be one of the factors attributing to the recent increase in EC insurance premiums.

25. In response to Mr Albert HO's concern about the principle adopted by the court in assessing damages and determining the final award, the Administration undertook to provide information in this regard.

(Post-meeting note: The Administration's response to members' concerns at paragraphs 21, 24 and 25 was circulated to members vide LC Paper No. CB(1)2376/02-03(01) on 29 August 2003.)

Business environment for the insurance industry

26. Noting that EC insurers had been suffering significant losses in the past few years, Mr NG Leung-sing expressed concern about the impact of the continuous worsening business environment on the insurance industry and sought the Administration's analysis of the problems of the insurance market. CI responded that according to a survey of OCI, average premium rate for EC insurance dropped by 28% (for construction EC business) between 1996 and 1999, despite that claims payout had increased significantly by about 90% during the period. Taking into account the amount of underwriting loss suffered by EC insurers and the unprecedented losses arising from the "911" events, the insurance industry had been reviewing their underwriting and premium setting policies, resulting in increase in the level of premium in recent years.

27. Mr Bernard CHAN expressed the concerns of the insurance industry about the unfavourable business environment in the past decade. He pointed out that the industry was in a difficult position as insurers had to set higher premiums to reduce underwriting loss but this had invited criticisms from Panel members and employers.

28. Mr LEE Cheuk-yan noticed that global risks were taken into account when risk assessments were made, hence the high premium set by local insurers. He considered it unreasonable for the business operators in Hong Kong to shoulder the global risks.

29. Mr Bernard CHAN explained that the insurance industry operated on a risk sharing concept in that all policyholders were contributing to a pool of fund for the insurance companies to manage so that the companies could afford the sum of payout for individual claims. He pointed out that given the escalating trend of common law damages awarded by the court in recent years, EC insurers had encountered difficulties in assessing the reasonable premiums and thus had suffered substantial underwriting loss in the past few years. These had led to insurers reviewing their underwriting and premium setting policies and higher premium levels were set as a result.

Suggestion of setting up a central EC system

30. Ms CHAN Yuen-han opined that given the difficulties encountered by various sectors in obtaining EC insurance, in particular, those high risk industries, the Administration could not rely on the market forces for solution. She suggested that the Administration should provide EC insurance coverage to employers through setting up a central EC system. She pointed out that as in the case of the MPF Scheme, the insurance industry was willing to offer proposals to even those high risk industries after pressure from the Government to set up a central MPF system. This might also applied in the case of EC insurance.

31. SFST pointed out that the proposal of a central EC system should be considered carefully as this might give rise to the concern of Government subsidizing employers in obtaining EC insurance coverage for their employees. Nevertheless, SFST said that the Administration could explore the feasibility of the proposal with the insurance industry and Mr Bernard CHAN, the representative of the insurance industry on the Legislative Council, might also discuss the idea with the industry.

32. Mr LEE Cheuk-yan disagreed with the Administration's principle of non-intervention under the present circumstances where the operation of the free market for EC insurance was not functioning effectively. He urged the Administration to take up the responsibility of ensuring all employers obtained EC insurance policy at reasonable and affordable cost and cautioned that if the Administration did not take the necessary action, the competitiveness and future economic development of Hong Kong would be impeded.

33. SEDL said that the fact of the insurance market at present was that insurers were offering EC insurance proposals to employers at higher premiums than the latter could accept, instead of the absence of the required insurance product in the market. He pointed out that increasing premium level was a global trend due to factors like contraction of worldwide reinsurance capacity and weak investment returns in recent years. The insurers were setting the premium levels through risk assessment and if the Government simply took up the responsibilities for all high risk insurance which the industry was only willing to offer at high premium levels, this might incur considerable financial burden to the Government in the long run.

34. Mr NG Leung-sing opined that it was impractical to request the Government to take up the responsibilities of providing EC insurance coverage as this might result in Government subsidies to the employers and put the burden on the taxpayers in the end.

Other means to assist business sectors

35. Mr Abraham SHEK requested the Administration to explore measures to assist the construction industry, such as through packaging of public works projects so that minor works items could be combined into one contract or liaising with insurers for collective negotiation of premium for contractors in groups. SEDL undertook to relay Mr SHEK's request to the Environment, Transport and Works Bureau for further consideration.

Admin

36. Mr LEUNG Fu-wah opined that the measure of grouping a number of small contractors to negotiate collectively with insurers for EC insurance coverage, which was being explored by the Labour Department (LD) currently, might be a feasible solution to the problem. In response, the Assistant Commissioner for Labour (Rights and Benefits), LD (AD/LD) informed members that in addition to

the collective negotiation on EC insurance coverage for construction contractors, LD was having other measures to facilitate employers in taking out EC insurance policies and making improvement in work safety.

37. Noting that with the assistance of LD, most of the employers seeking help for obtaining insurance coverage had been able to take out EC insurance policies eventually, Ms LI Fung-ying enquired about the number of employers who were still unable to obtain insurance coverage and whether their failure to obtain the coverage were attributable to the unreasonably high premium.

38. AC/LD said that LD had been providing assistance to employers to obtain EC insurance coverage and was glad to note that all these employers had been offered EC insurance proposals by the insurers and majority of them had taken out insurance policies subsequently. She however did not have the information on those employers who did not seek further assistance but had not informed LD of their decisions on the insurance offers.

39. Mr Albert HO opined that the Government should provide assistance to those employers who were unable to afford the high premium level set by the market force, in particular, for building modifications and alterations works conducted in accordance with statutory requirements. SEDL undertook to relay the proposal to the relevant bureau for further consideration.

Admin

40. Mr Albert HO opined that the Administration should try to streamline the procedures involved in EC claims and reduce legal cost through facilitating agreement between the claimants and their employers on compensation. In reply, SEDL said that the Administration was working towards the goal of reducing legal and other related charges in EC claims and would continue to work this direction.

Eligibility of employees for EC

41. Mr Abraham SHEK expressed concern about the eligibility of employees who had contracted the Severe Acute Respiratory Syndrome (SARS) during their course of work under ECO. In reply, AC/LD confirmed that these employees were eligible for statutory compensation under ECO. She was however unable to comment on the impact of the EC compensation for SARS patients on the level of premium as information on the amount of compensation awarded was not yet available at the present stage.

III Any other business

42. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 1
Legislative Council Secretariat
3 September 2003